

Date: February 27, 2015

To: Thomas J. Bonfield – City Manager

Through: W. Bowman Ferguson – Deputy City Manager

From: Marvin G. Williams – Director of Public Works

Subject: Update on Failed and Struggling Developments

Executive Summary

The Failed and Struggling Development Program was created to assure the completion of all required infrastructure and private stormwater facilities at minimal costs to citizens and the City of Durham. The City of Durham Public Works Department currently oversees the program and is responsible for approximately 62 projects or phases of projects; which span across 15 subdivisions. This update summarizes the following items:

- A. Number of projects per category as of February 17, 2015
- B. List of developments added to program since March 17th, 2014
- C. Status of current Category 4: Failed developments
- D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II
- E. Developments successfully completed since March 17th, 2014

Recommendation

The Public Works department recommends that City Council receive the update on the Failed and Struggling Development Program.

Background

Since late 2008, the economy has drastically changed the manner in which the construction and housing industries operate. These changes resulted in a country-wide decline in new home sales and overall commercial developments. In addition, banking and financial markets which provided financial assistance to developers, builders, and owners, have undergone changes that have resulted in an environment that is inherently unstable for these customers. This instability created situations in which some developers are no longer able to sustain developments and are forced to close their businesses or restructure their companies. As a result of the company closings and restructurings, some developers have not completed the street, sidewalk, and stormwater facility infrastructure required for developments.

In response to this situation, the Failed and Struggling Development Program was created in early 2009. The Public Works Department was assigned to oversee this program to assure the completion of required infrastructure.

As developments are added to the program, the Public Works Department has placed each development into one of four categories of financial distress. Each development has unique circumstances and the tools that are available to help guide one development to completion, but may not be available to the same degree in another development. Projects may move from one category to another based on various factors (developer solvency, product sales, assets, construction security amounts, infrastructure to be completed, etc.). The four categories are defined as follows:

- **Category 1- Restructured Developments:** The developer restructured the company or a new developer purchased the project. Projects have appropriate construction securities in place and are completing the required infrastructure.
- **Category 2 – Monitored Developments:** Projects have shown multiple signs of financial distress. Public Works has been monitoring the development's progress and is working with the Developer to assure completion of the project's infrastructure. The lender will often become part of the discussion to monitor the project in case the project goes into default.
- **Category 3 – Struggling Developments:** The developer has filed for bankruptcy or is unresponsive to Public Works requests to complete the infrastructure. Public Works and the City Attorney's Office will begin obtaining any remaining funds available for completion of the development (either through calling securities or actively pursuing these funds through lawsuits).
- **Category 4 – Failed Developments:** The developer company has functionally dissolved and Public Works has either obtained construction security funds or there were no construction securities available. The Public Works department is working through available options for consideration by City Council to determine the most appropriate way to complete the required infrastructure.

The Public Works Department's most difficult developments to bring to successful conclusion are located in Category 4. These developments may lack sufficient construction security funding to complete the infrastructure required in the project and the development companies are defunct. Construction security amounts were established with prices current at the time of construction, but as developments languished the base price of labor and

materials has increased dramatically. Many developments have degraded over time due to the developer's neglect, and in some cases the degradation has been substantial. The cost to repair the degradation increases the cost to complete such developments considerably. Construction security amounts were initially established as reasonable security measures to ensure compliance, not as a total project completion funding source. Accordingly, in most cases the construction securities are insufficient and considerations of other ways to secure funds to complete the infrastructure are necessary.

In 2012, policies were developed by the Public Works Department and approved by City Council to attempt to prevent a repeat of situations like this from occurring in the future. Security amounts have been increased to levels that would appropriately fund completion of the required infrastructure. Monitoring of these securities and amounts occurs annually.

Issues and Analysis

The following updates and information items are provided by the Public Works Department and are current as of March 17, 2014.

A. Number of projects per category as of February 17, 2015

Table 1: Project and Subdivision Totals per Category

Category	Description	Projects or Phases	Number of Subdivisions Represented
1	Restructured Developments	8	2
2	Monitored Developments	7	2
3	Struggling Developments	31	3
4	Failed Developments	16	8
	TOTALS	62	15
	Completed Developments without financial impact to the residents of the projects	128	38
	Completed Developments with financial impact (ie project was assessed for completion of infrastructure) to the residents of the projects	1	1

B. List of developments added to program since March 17th, 2014

No new developments have been added to the Failed and Struggling Development Program.

C. Status of current Category 4: Failed developments

The Category 4 failed developments are listed below in Table 2. A specific status update for each project follows this table (see Appendix).

Table 2: Category 4 Summary

Subdivision	Total Lots	Vacant Lots	Security Obtained		Incomplete Infrastructure
			Streets	Stormwater Facilities	
Amberlynn Valley Townhomes	68	18	\$24,000	Complete and accepted	Street
Ganyard Townes	102	50	\$8,000	Complete and accepted as part of Ganyard Farm Development	Street
Pearl Knoll	12	6	\$10,000	\$12,000 and \$4,317 (SFA)*	Streets and stormwater facility
Windermere Ridge Townhomes	42	19	\$10,000	\$60,000	Street and stormwater facility
Northern Way	13	6	\$14,000	\$42,496	Street and stormwater facility
Forrest Brook	20	1	\$6,000	n/a	Sidewalk
The Landings at Southpoint Phase 1	2 buildings with 27 apartments each built (1 future building with 103 units remaining)		n/a	\$0	Stormwater facilities

* (SFA): Funds to secure obligations required by Stormwater Facility Agreements

Project Status Updates

1. Amberlynn Valley Townhomes: This is a 91-lot townhome subdivision project with 18 vacant lots. The original developer went bankrupt before completing the main street, Ivey Wood Lane, and the private parking lot for the 18 lots. The vacant lots in the subdivision are owned by two separate entities, one a bank and the other a holding company for an out of state developer. Public Works is currently attempting to work with local developers to look at purchasing all 18 lots and completing the

development. The stormwater facilities have been completed for this project and are owned and maintained by the home owners association.

2. Ganyard Townes: This is a 102-lot townhome subdivision with 50 vacant lots. Ganyard Townes is a phase of the Ganyard Farms project. The original developer went bankrupt before completing the street, Harvest Oaks Lane, and the parking lots. The vacant lots were purchased by a new developer. The Public Works Department is working with the new developer to obtain interest from local builders so that this development can be completed. The stormwater from the townhomes flows to the Ganyard Farms stormwater facilities, which are complete and under maintenance by the home owners association.
3. Pearl Knoll: This is a 12-lot single-family subdivision with 6 vacant lots. The original developer went bankrupt before completing the streets and the stormwater facility. The vacant lots in the project were auctioned off by BB&T Bank and are now owned by the daughter of the original developer. The Public Works Department has made multiple attempts to contact the owner of the vacant lots, but the owner has been unresponsive. The Public Works Department will continue to pursue a resolution to complete the infrastructure with the owner of the project.
4. Windermere Ridge Townhomes: This is a five phase townhome development where only the first two phases were constructed. There are 42 lots in the project, 19 which are vacant. The original developer went bankrupt before completing the street, parking lot, and stormwater facility. The completion of the development has been delayed due to bankruptcy and foreclosure for the third time. At the end of the current foreclosure, SouthBank will become the new owner of the project. The future phases of the development have been purchased by a new developer who will develop these parcels in the future. The Public Works Department, Southbank and the new developer have completed an infrastructure completion agreement to facilitate the reimbursement of the collected construction securities. The developer requires construction drawing and utility permit approval prior to starting construction of the new phases.
5. Northern Way: This is a 12-lot single-family subdivision with 6 vacant lots. The original developer went bankrupt before completing the street, Northern Way Court. The subdivision has a single stormwater facility that was completed but not appropriately maintained or transferred to the home owners association. The Public Works Department has met with a new developer that has optioned to purchase the vacant lots in the subdivision and is set to start construction this year. The Public Works Department will negotiate an infrastructure completion agreement with the new developer to facilitate reimbursement of the construction security obtained for the subdivision.
6. Forrest Brook: This is a 20-lot single-family subdivision with one vacant lot. The original developer completed the streets in the subdivision, but went bankrupt

before completing approximately 100 feet of sidewalk and one curb ramp. The incomplete sidewalk is in front of the vacant lot, which is now under construction. Public Works will require the owner of the lot to build the sidewalk and curb ramp prior to releasing the certificate of compliance.

7. The Landings at Southpoint: This is a condominium development. The original developer went bankrupt before completing the parking lots and three stormwater facilities. Paragon Commercial Bank has foreclosed on the development rights to the project for the future condominium units. The Public Works Department has met with Paragon Commercial Bank and has explained to them the work required to complete the infrastructure.

D. Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II

The securities associated with Ravenstone and Stonehill Estates subdivisions are the subject of a federal declaratory judgment lawsuit brought by the companies that issued the securities. Both the City and the sureties have filed motions for summary judgment and have received a ruling from the judge. Based on this ruling from the judge, the City of Durham is working with the insurance companies to reach a settlement agreement.

E. Developments successfully completed since March 17th, 2014

1. Bay Pointe Phase III: This is a 68-lot phase of the Bay Pointe subdivision with all lots built. The original developer went bankrupt prior to completing the streets. This subdivision has no required stormwater facilities. Please see Green Gardens Phase II below.
2. Green Gardens Phase II: This is a 70-lot phase of the Bay Pointe Subdivision with 18 vacant lots. The original developer went bankrupt prior to completing the streets. This subdivision has no required stormwater facilities. The vacant lots in the subdivision are owned by Level Homes and are under construction. The Public Works Department negotiated with Level Homes an infrastructure completion agreement to facilitate reimbursement of the construction securities obtained from the subdivisions. Last summer Level Homes completed the streets in both Green Gardens Phase II and Bay Pointe Phase III and was reimbursed the construction securities collected from the projects.
3. Riverside on the Eno: This is a 24-lot subdivision with 13 vacant lots. The original developer of the subdivision went bankrupt and left the streets and two stormwater facilities incomplete. During the 2012 paving season, the Public Works Department completed the streets using approximately half of the money from the construction security collected for this purpose. The remaining funds from the construction security will be used for the completion of the stormwater facilities. Public Works

has entered into an infrastructure completion agreement with a new developer. The new developer recently completed the stormwater facilities. The facilities are awaiting stabilization before being turned over to the home owners association. The new developer will be reimbursed the construction securities collected once the as-built drawings are approved and the facilities accepted.

The Public Works Department continues to coordinate with developers, banks, bonding companies, attorneys, and prospective buyers to complete infrastructure for projects in the Failed and Struggling Development Program. In the future, the Public Works Department will bring to City Council specific projects with recommendations for action when projects have no route to completion other than specific City intervention.

Alternatives

The Alternatives section is not applicable for this update.

Financial Impact

The Financial Impact section is not applicable for this update.

SDBE Summary

The SDBE Summary section is not applicable for this update.